

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA INFANTE)	
Claimant)	
VS.)	
)	Docket No. 204,462
IBP, INC.)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from an order dated April 4, 1997, by which Administrative Law Judge Floyd V. Palmer denied claimant's motion to quash a deposition which had been scheduled by respondent's counsel, the deposition of Rueben Garza. Mr. Bryce A. Abbott has participated in this case as a Board Member Pro Tem in place of Board Member Gary M. Korte.

APPEARANCES

Claimant appeared by and through her attorney, Diane F. Barger of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Tina M. Sabag of Dakota City, Nebraska.

ISSUES

The issue on appeal is whether the deposition testimony of Rueben Garza and, more specifically, the exhibit introduced from that testimony, a record relating to an unemployment compensation proceeding, may be admitted into evidence in the current workers compensation action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the deposition testimony of Rueben Garza and the exhibit introduced through that deposition testimony may not be admitted or considered as evidence in this case.

The facts are essentially undisputed. Claimant seeks benefits from an injury which she alleges arose out of and in the course of her employment with respondent, IBP, Inc. She seeks a work disability in addition to a disability based upon functional impairment. Claimant no longer works for respondent, IBP, Inc., and the reasons for her leaving are an issue in the workers compensation claim. Claimant has asserted that she left, at least in part, because the injuries rendered her unable to continue to perform her duties.

In connection with the workers compensation claim, respondent scheduled the deposition of Rueben Garza, an employee of the Texas Department of Human Resources, for the purpose of introducing a document prepared in connection with an unemployment compensation proceeding in Kansas. Respondent contends that the document contains information relating to the reason claimant left her employment with IBP, Inc., information which is inconsistent with the claims made in this workers compensation proceeding. Claimant objected to the deposition and filed a motion for protective order to prevent the taking of that deposition. Claimant cited, in support of her motion, K.S.A. 44-714, a statute which provides certain protections to the disclosure of unemployment compensation records. The Administrative Law Judge denied the motion and cited the language of K.S.A. 44-714(f), which provides that the statute will not be understood to prevent use of the records "for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state program." The Administrative Law Judge also indicated that he was assuming the document had been disclosed to respondent in accordance with Texas law.

The Appeals Board has concluded that the testimony of Rueben Garza and the exhibit offered in that deposition should not be admitted in this proceeding. The Appeals Board so finds on the basis of a regulation which was not presented by the parties either to the Administrative Law Judge or the Appeals Board on appeal. K.A.R. 50-4-2, the regulation governing disclosure of unemployment records, provides in pertinent part as follows:

(4) Information shall be disclosed upon written request of either of the parties or their representatives for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state benefit program if:

(A) The written request is accompanied by a subpoena or order for records production from an administrative law judge or other official, and

(B) The written request states that the requested information will not be released or published in any manner. The introduction of any information disclosed as evidence at a public hearing or as part of a record available to the public constitutes publication.

Records introduced in the workers compensation case must be considered evidence at a public hearing and as a record available to the public. The introduction into the workers compensation records, therefore, constitutes a publication and would be in violation of the above-quoted regulation. The Appeals Board concludes, even if the workers compensation case is considered to be a "state benefit program" as assumed by the parties and the Administrative Law Judge in his order, the regulation would prohibit the introduction and disclosure of the record into the workers compensation proceedings.

The Appeals Board also notes that the deposition of Rueben Garza has been taken. The witness testified, in part, the record in question would not have been disclosed from the Texas agency to the respondent but would, instead, have been sent to the Kansas unemployment agency. This is, again, a factor not presented to the Administrative Law Judge. It is a factor which eliminates possible consideration of the disclosure rules of Texas.

For the above-stated reasons, the Appeals Board concludes that the order by the Administrative Law Judge should be reversed. The deposition of Rueben Garza and the exhibit introduced at that deposition may not be considered as evidence in this proceeding.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order dated April 4, 1997, entered by Administrative Law Judge Floyd V. Palmer, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Tina M. Sabag, Dakota City, NE
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director